

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR PETITIONER AND JOINT APPENDIX

IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 8622 **150**

HEBREW HOME FOR THE AGED, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

Petition for Review of Decision of the Board of Tax
Appeals for the District of Columbia.

COMPTROLLER OF THE DISTRICT OF COLUMBIA

FILED MAY 31 1932

Joseph W. Hirschman

CLERK

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IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 8622.

HEBREW HOME FOR THE AGED, A BODY
CORPORATE, *Petitioner,*

v.

DISTRICT OF COLUMBIA, A CORPORATION,
Respondent.

**PETITION TO REVIEW DECISION ON THE BOARD OF
TAX APPEALS FOR THE DISTRICT OF
COLUMBIA.**

JURISDICTIONAL STATEMENT.

Respondent, in April, 1942, assessed real estate taxes against this petitioner, on Parcel 83/63, for land and improvements, totalling \$2,791.43, for the last half of the fiscal year ending June 30, 1941, and the entire fiscal year ending June 30, 1942, and said sums were paid by petitioner under protest in writing. This proceeding was then instituted in the Board of Tax Appeals for the District of

Columbia (Appendix pp. 1 to 4), under District of Columbia Code 1929, Sup. V. title 20, Sec. 974. Pending the hearing on this petition before the Board of Tax Appeals the respondent exempted the greater portion of the land involved herein from taxation by virtue of the provisions of an Act of Congress, passed December 22, 1942, with the exception of a part of Parcel 83/63, now known as Lot 805, in Square 2902, so that at the time of the hearing before the Board of Tax Appeals, the taxes involved were for improvements only on part of Parcel 83/63, now known as Lot 805, in Square 2902, for the last half of the fiscal year ending June 30, 1941, and the entire fiscal year ending June 30, 1942, in the amount of \$656.25. (Rec. p. 26)

On the 6th day of August, 1943, the Board below entered its decision affirming the assessment for improvements against Lot 805, in Square 2902. (Appendix pp. 16 to 22.) A petition for review (Appendix pp. 19 to 22), was then filed with this Court. The latter's jurisdiction being invoked under the Code 1929, Sup. V, title 20, Sec. 975.

STATEMENT OF THE CASE.

The petitioner, the Hebrew Home for the Aged, was incorporated in 1914, as a non-profit corporation, under the laws of the District of Columbia, to provide a Home for indigent and aged persons of the Jewish faith. (Rec. pp. 30-31.) Petitioner receives the largest portion of its funds for maintenance from The Community Chest of Washington, D. C., and the Board of Tax Appeals for the District of Columbia found the Hebrew Home for the Aged to be operated as a "purely public charity". (Appendix p. 17.) In 1935 petitioner acquired all of Parcel 83/63, containing approximately 2.64 acres, located on Spring Road, Northwest, Washington, D. C. At the time of the acquisition of the land, a public campaign for funds was instituted to erect a Home for the Aged, a Hospital and Synagogue, constituting three buildings, on this land. Up to the present time only one building has been erected by peti-

tioner on part of this land, the Home for the Aged. (Rec. pp. 31-32.)

In 1939 petitioner entered into a lease agreement with the Jewish Social Service Agency, another non-profit corporation, organized under the laws of the District of Columbia, whereby it leased to the Jewish Social Service Agency, for a period of twenty years, part of Parcel 83/63, located immediately west of the Hebrew Home for the Aged premises itself, approximately 50x150 feet, now known as Lot 805, in Square 2902, by the terms of which lease the Jewish Social Service Agency agreed to pay the nominal sum of \$1.00 per year as rent, and providing further that the Jewish Social Service Agency was to erect on said leased premises, at its own cost and expense, a three-story building to be used by the Jewish Social Service Agency for its charitable purposes, and at the expiration of twenty years, or any renewal or extension of the lease, the improvements erected by the Jewish Social Service Agency were to be and become the property of the Hebrew Home for the Aged. (Appendix pp. 12 to 16.) The Board of Tax Appeals found the Jewish Social Service Agency to be a "purely public charity". (Appendix p. 17.)

The petitioner, Hebrew Home for the Aged, and the Jewish Social Service Agency, are closely affiliated charitable organizations. Many members of the Board of Directors of the petitioner corporation are also members of the Board of Directors of the Jewish Social Service Agency (Rec. p. 36, p. 2A), and the Executive Director of the Jewish Social Service Agency is a member of the Board of Directors of the petitioner corporation (Rec. p. 36), and as a result of the request of The Community Chest of Washington, D. C., the Jewish Social Service Agency, through its trained case workers, investigates applications for admission to the Hebrew Home for the Aged, makes written reports of these investigations and one of its case workers sits in at the meetings of the Admissions Committee of the petitioner considering applications for admission. (Rec. pp. 36 and 37.)

For many years prior to 1942, Parcel 83/63 and all of the improvements thereon were on the tax free list. In 1942 the Commissioners of the District of Columbia placed all of said Parcel 83/63, together with the improvements thereon, on the tax list and assessed the petitioner for real estate taxes on said Parcel and improvements thereon. This assessment was paid under protest, in writing, and this appeal taken to the Board of Tax Appeals. Pending the hearing before the Board of Tax Appeals, Congress, on December 24, 1942, passed an Act, as a result of which the Commissioners exempted all of Parcel 83/63 with the exception of the ground immediately west of the Hebrew Home for the Aged, leased to the Jewish Social Service Agency, on which the agency erected its building.

After a hearing before the Board of Tax Appeals, the assessment of the improvements on Lot 805, in Square 2902, was affirmed. (Appendix pp. 16 to 22.)

STATUTES INVOLVED.

District of Columbia Code, 1940, Title 47, Par. 801:

“The property exempt from taxation shall be the following and no other (except as otherwise specifically provided in this code), namely: First, the Corcoran Art Building, free public library buildings, churches, the Soldiers’ Home, and grounds actually occupied by such buildings; secondly, houses for the reformation of offenders, almshouses, buildings belonging to institutions of purely public charity, conducted without charge to inmates, profit or income; cemeteries dedicated and used solely for burial purposes and without private income or profit; but if any portion of any such building, house, grounds or cemetery so in terms excepted is larger than is absolutely required and actually used for its legitimate purpose and none other, or is used to secure a rent or income, or for any business purpose, such portion of the same, or a sum equal in value to such portion, shall be taxed against the owner of said building or grounds; thirdly, such property as is exempt from taxation by laws of the United States. So, also, shall every rectory, par-

sonage, glebe house, and pastoral residence which is occupied as a residence by the pastor, rector, minister, or rabbi be so exempt from taxation in the District of Columbia; provided that such rectory, parsonage, glebe house, or pastoral residence be owned by the church or congregation for which the said pastor, rector, minister, or rabbi officiates: And provided further, that not more than one such rectory, parsonage, glebe house, or pastoral residence shall be so exempt for any one congregation." (Mar. 3, 1877, 19 Stat. 399, 402, Ch. 118, 8 and 18: Aug. 15, 1916, 30 Stat. 514, Ch. 342).

SUMMARY OF ARGUMENT.

1. The improvements taxed by the District of Columbia against the petitioner, the Hebrew Home for the Aged, ~~were~~ ^{will} not be ~~not~~ the property of the Hebrew Home for the Aged by the provisions of the lease between the Hebrew Home for the Aged and the Jewish Social Service Agency until the expiration of twenty years, or any renewal or extension of the term, and hence, were not properly taxable against the petitioner.

2. The lease arrangement between the petitioner and the Jewish Social Service Agency did not produce "rent or income to the petitioner", so as to bring the improvements within the exception to the District of Columbia real estate exemption statute, (D. C. Code, 1940, Title 47, Par. 801) (Brief, p. 4.)

ARGUMENT.

I.

Under the provisions of the lease between petitioner and the Jewish Social Service Agency, the Agency was, at its own cost and expense, to erect a two-story building on land belonging to the petitioner, and at the expiration of twenty years or after any renewals or extensions of said lease, the building was to become the property of petitioner. Hence, at the time of the assessment involved herein, these improvements were not the property of the petitioner, but

of the Jewish Social Service Agency. If taxable at all, they were taxable against the Agency as the owner thereof. The Board of Tax Appeal recognized that there might be an ownership of improvements separate and distinct from the ownership of the land by holding in its decision (Appendix, p. 21):

“Under well recognized rules of the law of real property a building erected on one’s land by someone else becomes the property of the owner of the land *in the absence of a clear understanding to the contrary.*” (Italics supplied.)

It is respectfully submitted that the Board of Tax Appeals has misapplied the application of the above doctrine to the facts in this case, for by the express terms of the lease between petitioner and the Jewish Social Service Agency there is “a clear understanding” that the improvements erected were not to become the property of petitioner until the expiration of the lease or any renewals or extensions thereof.

II.

Par. 801, of Title 47 of the District of Columbia Code, 1940, covering exemption of property from taxation provides among others for the exemption from taxation of “buildings belonging to institutions of purely public charity” * * * unless any portion of it “is used to secure a rent or income”. The Board of Tax Appeals has found that both the petitioner, the Hebrew Home for the Aged and the Jewish Social Service Agency are “purely public charities”, so that in any case, whether it be held that the improvements are the property of the petitioner or of the Jewish Social Service Agency, the improvements belong to an institution of “purely public charity”. The Board of Tax Appeals held, however, that the effect of the lease arrangements between petitioner and the Jewish Social Service Agency was to “produce rent or income to the Home, in addition to the nominal sum of \$1.00, which, of course, is not here considered”.

It is respectfully submitted that to hold the arrangements between the two charitable organizations involved herein, is such as to produce "income or profit" to the petitioner is to interpret the provisions of the tax exemption statute in a narrow and restricted sense.

As this Court has stated, in the case of the *District of Columbia v. Mt. Vernon Seminary*, 69 App. D. C., p. 251:

"The language used in the tax statute should be given in its ordinary meaning."

And again on p. 254:

"The language used in the tax statute should be read in the ordinary and natural sense."

It is difficult to see how "income or profit" can inure to petitioner herein as a result of the lease arrangements. The nominal rental of \$1.00 per year was not considered by the Board of Tax Appeals as rent or income (Appendix, p. 16), and what the value of the building erected by the Agency, at its own cost and expense, will be to the Home when title to it reverts to petitioner at the end of twenty years, depends on many factors not apparent at this time.

Furthermore, the Supreme Court of the United States, in the case of *M. E. Blatt v. U. S.*, 305 U. S., p. 186, has held that improvements erected by lessee are not considered rent or income unless an intention is present that this be so, holding:

"Even when required, improvements by lessee will not be deemed rent unless intention that they shall be is plainly disclosed. Rent is a 'fixed sum, or property amounting to a fixed sum to be paid at stated times for the use of property'. * * * It does not include payments, uncertain both as to amount and time, made for the cost of improvements". * * *

"But assuming that at some time value of the improvements would be income of the lessor, it cannot be reasonably assigned to the year in which they were installed". * * *

CONCLUSION.

In view of the foregoing it is respectfully submitted that the decision of the Board of Tax Appeals should be reversed, with costs.

Respectfully submitted,

SIMON HIRSHMAN,
NORMAN FISCHER,
Attorneys for Petitioner,
915 Woodward Building,
Washington, D. C.

APPENDIX

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IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 8622.

HEBREW HOME FOR THE AGED, A body corporate,
1125 Spring Road, N. W., Washington, D. C., *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

**Petition for Review of Decision of the Board of Tax
Appeals for the District of Columbia.**

JOINT APPENDIX.

I.

**PLEADINGS DOCKET ENTRIES AND OTHER PAPERS
DESIGNATED.**

- 1 Received and Filed Jun 10 1942 Board of Tax Ap-
peals for the District of Columbia

Petition.

The above named petitioner petitions for cancellation of
assessment of taxes against it and refund of taxes paid
under protest and alleges as follows:

1. Petitioner is a body corporate, organized in the year 1914, as a non-stock, non-profit organization, pursuant to provisions of Title 5, of Chapter 5, of the Code of Laws for the District of Columbia, with its principal office located at 1125 Spring Road, Northwest, Washington, D. C., where it maintains its Home for the Aged.

2. The tax in controversy is a real estate assessment tax for the land and improvements thereon, which constitutes the Hebrew Home for the Aged, located on Parcel 83/63, and are assessments for the first and second half of 1942, in the aggregate amount of \$3,791.41. The notices of assessments were dated April 30, 1942, and the tax was paid by the petitioner, under protest in writing on May 28, 1942, as will appear by the copies of assessment attached hereto as "Exhibit A", and letter of protest "Exhibit B". The tax was assessed under sub-section D of Section 5, of Title 9, of the Act of May 16, 1938, in pursuance of the action of the District Commissioners in Cases No. 788 and 1038. The assessment made by the Board of Assistant Assessors is based upon the error that this property is not legally exempt under existing law, as not being a
2 "public charity".

3. The facts upon which petitioner relies for the basis of this proceeding is as follows: As above stated, the Hebrew Home for the Aged was organized in 1914, under Title 5, Chapter 5 of the Code of Laws for the District of Columbia, providing for the incorporation of charitable organizations. Since its incorporation the Home has been existing principally on public benefactions. Its admission is limited to persons of the Jewish faith. During the year 1941, the Home received from the Community Chest of Washington, D. C., the sum of \$24,529.39 and received from donations from children of guests, amounts totalling \$4,550.00, the actual expenses for the operation of the Home during the year 1941 amounted to \$30,439.53. There is a total population of 58 inmates, 45 of them have no

property or children financially able to contribute to the cost of their maintenance, while 13 children contribute various amounts, depending upon their financial ability; none of the latter contribute the actual amount of cost of maintaining their parent or parents in the Home. No part of the income of the Home inures to the benefit of any individual other than employees.

4. In 1940, the Hebrew Home for the Aged leased a portion of its Parcel 83/63 to the Jewish Social Service Agency, a charitable organization, to erect an office building for its uses, at a nominal rental of \$1.00 per year. This office building is now used by case workers of the Agency for an office building and free dental clinic. Approximately 3,000 cases of adults and children are given services by this Agency each year. In addition, the Jewish Social Service Agency assists the Hebrew Home for the Aged in the investigation of applications for admission to the Home, and makes no charge therefor. A member of the staff is present at Committee meetings of the Home and reports on cases for admission and a director of the Jewish

Social Service Agency is also a member of the Board
3 of Directors of the Hebrew Home for the Aged. The

Jewish Social Service Agency receives an annual allotment from the Community Chest of Washington, D. C., of \$49,436.34. Part of the Assessment complained of herein is for the ground and building occupied by the Jewish Social Service Agency.

5. Ever since its incorporation in 1914, until the year 1941, the Commissioners have recognized the exempt character of the ground and buildings on Parcel 83/63 and have not placed the same on the tax rolls. In March, 1941, the Commissioners, in Cases No. 788 and 1038, involving the land in question, stated that they contemplated restoring this Parcel to its taxable status on the expiration of 60 days from the date of the action, which was dated April 5, 1941, on the ground that the Hebrew Home for the Aged

and the Jewish Social Service Agency were not "purely public charities", because of the fact that "it limited its benefactions to adult men and women of the Jewish faith". A petition was immediately thereafter filed with the Commissioners, asking for re-consideration and rehearing of Cases No. 788 and 1038 and on April 30, 1942, a letter was received from the Commissioners, denying the petition for re-hearing and sending notices of assessment as aforesaid.

6. Your petitioner states that the District erred in holding that this property is not exempt from taxation by reason of the fact that it limits its benefactions to persons of "Jewish faith" only. The trend of modern authorities is to the effect that an institution is nevertheless a purely charitable institution even though it limits its benefactions to members of certain organizations or to certain classes.

Wherefore petitioner prays that the Board may hear the proceedings, cancel the assessment and refund to
4 the petitioner the amount of taxes paid under protest.

SIMON HIRSHMAN
NORMAN FISCHER
Counsel for Petitioner.

District of Columbia, ss:

Chas. A. Goldsmith being duly sworn, says that he is the President of the Hebrew Home for the Aged above named petitioner corporation, that he is duly authorized to verify the foregoing petition and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and those he believes to be true.

CHAS. A. GOLDSMITH

Subscribed and sworn to before me this 9th day of June, 1942.

(Seal) ROBERT H. NOLLI
Notary Public—D. C.

5 District of Columbia, Office of Assessor

1942			1942	
First Half			First Half	
Sq. Lot	Value of Land	Value of Improvements	1st half	Tax for year
83/63		25000	218.75	437.50
Bill render 4/30/42 bg—g Hebrew Home for the Aged, Inc., 1125 Spring Rd., NW., Washington, D. C. Case No.1038 No penalty involved if paid on or before 6/1/42				

/s/ S. M. Bachman
Deputy Assessor.

District of Columbia, Office of Assessor.

1942			1942	
Second Half			Second Half	
Sq Lot	Value of Land	Value of Improvements	1st half	
83/63		25000	218.75	
Bill rendered 4/30/42 bg—g Hebrew Home for the Aged, Inc., 1125 Spring Rd., N. W., Washington, D. C. Case 1038 No penalty involved if paid on or before 6/1/42				

/s/ S. M. Bachman
Deputy Assessor.

District of Columbia, Office of Assessor.
Real estate taxes, for fiscal year
July 1, 1942 to June 30, 1942.

1942 First Half	Value	Value of Im- provements	Total Value	1st half	1942 First Half Tax for year
Sq Lot	42240	25000	167240	1463.35	2926.70
83/63					
Restored to taxable list 6/5/41					
Bill rendered 4/30/42 case 788					
Hebrew Home for the Aged, Inc., 1125 Spring Road NW., Washington, D. C.					
No penalty involved if paid on or before 6/1/42					
/s/ S. M. Bachman Deputy Assessor.					

6 District of Columbia, Office of the Assessor,
arrears bill

Parcel 83/63	Bill rendered 4/30/42
Taxable from 6/5/41 to 6/30/41 for sccond half 1941	
Assessed to Hebrew Home for the Aged Inc.	Amount of tax 208.48
Bill made by gb—compared by g 42240 land	
125000 imp. Restored to taxable list 6/5/41. Case 788	
No penalty involved if paid on or before 6/30/42	
/s/ B. M. Bachman Deputy Assessor.	

District of Columbia, Office of the Assessor.

arrears bill

Bill rendered

4/30/42

For Supplemental Ledger (125000) Imp.
2nd half 1941

Assessed to Hebrew Home for the Aged, Inc.	Amount of tax 218.75
--	----------------------------

Bill made by gb—compared by g
No penalty involved if paid on or before
6/1/42

Case #1038

/s/ S. M. Bachman
Deputy Assessor.

7

(Copy)

Government of the District of Columbia.
Executive Offices

April 27, 1942.

Mr. Simon Hirschman,
Woodward Building,
Washington, D. C.

Dear Sir:

Further reference is made to your protest, on behalf of the Hebrew Home for the Aged, against restoration to a taxable status of parcel 83/63, which property is owned by the Home.

I am directed by the Commissioners to inform you that this matter was referred to the Corporation Counsel, who advises that the Hebrew Home for the Aged is not entitled to real estate tax exemption under existing law. Your appeal is, therefore, denied.

Very truly yours,

/s/ G. M. Thornett,

Secretary,
Board of Commissioners, D. C.

* * * * *

PETITIONER'S EXHIBIT 1**JEWISH SOCIAL SERVICE AGENCY**

Washington, D. C.

Fifty-second Annual Report

1890-1942

Member of

The Community Chest of Washington, D. C.

An Account of Our Expenditures During the Year 1942.

Audited by Sidney Haas

Balance on hand January 1, 1942.....	\$ 554.24
For the fiscal year ending December 31, 1942, the Jewish Social Service Agency and Jewish Foster Home received from the Community Chest	48,224.12
In addition, we received interest from our en- dowment fund, amounting to	1,596.93
Refunds and money contributed for purposes not included in our regular budget, amounting to.	1,660.46
Special Fund	1,529.79
Total receipts for the year were	\$53,565.54

In addition the United Jewish Appeal of Washington, D. C., allocated \$11,000 to the Jewish Social Service Agency for the care of refugees for the period 1942-43. The local refugee program is carried out in cooperation with the National Refugee Service, Hebrew Immigrant Aid Society, and the National Council of Jewish Women.

The family and child care service of the Jewish Social Service Agency which is carried on by the trained case work staff is the most important phase of our work and is the primary function of the agency. The cost of this service to individual families and children was.. \$11,778.04

To coordinate these services and make the operation of the agency as efficient as possible—to maintain professional standards—to safeguard the interests of both client and community, requires the services of an administrative staff. Salaries of these employees, plus all operating expenses, such as rent, telephone, transportation, postage, office supplies, etc., amounted to		12,578.31
Another means of helping families is by giving financial assistance when that is needed. For this direct aid we spent		27,115.98
Special Fund		2,084.03
Total expenditures for the year were.....		\$53,556.36
Balance on hand January 1, 1943		9.18

Our sincere appreciation to all who actively supported the work of the Jewish Social Service Agency in 1942, through contributions of money and service to the Community Chest and the United Jewish Appeal.

The Service Record in 1942

The Figures

The Facts

- 823 families and children were served by the agency, exclusive of out-of-town investigations, and foster home and adoptive investigations. 793 were served in 1941, representing an increase of almost 4% in 1942.
- 313 or 33.5% received financial help, in addition to case work service. 318 received financial help in 1941, representing a decrease of almost 2% in 1942.

- inquiries from agencies in other cities were answered in addition to families and children served.
- 114 These often required a great deal of time and skill. 484 such inquiries were handled in 1941.
- children received special case work services, of whom 23 were placed outside their own homes through the foster care program for which the
- 97 agency now has responsibility, delegated to it by the Board of the Jewish Foster Home. This represents an increase of 44% over number of children placed in 1941.
- 87 foster home and adoption investigations were made in 1942.
- families of refugees received care of whom 36 were
- 105 given financial help. In 1941 the agency served 245 families of whom 50 received financial assistance.
- home visits and office consultations were made by
- 126 our volunteer staff of 34 physicians and consultants, in addition to meeting many surgical needs and furnishing psychiatric consultations.
- patients received complete treatment, free of
- 115 charge, in the Dental Clinic, staffed by 22 volunteer dentists.
- of the families came to us on their own initiative
- 53% after learning about the agency from friends, neighbors, schools, doctors, board members and general publicity regarding our work.
- of the families and individuals who applied to the
- 62% agency for care were known to us for the first time.
- 23% of all applicants this year were government employees.
- of the families and individuals served came to
- 21% Washington for war work or to be near relatives in government or military service.

16% of the people applying to us for help were suffering from mental and personality disturbances.

14 social investigations were made of applicants for admission to the Hebrew Home for the Aged, approximately the same number as in 1941.

7 educational loans were granted through the Goldsmith Educational Loan Fund, totaling \$1,672.50, an increase of \$1,089 over 1941.

8 families were assisted in self-support projects under the direction of the Business Advisory Committee. Loans totaling \$3,357.50 were granted with the cooperation of the Stanley Lansburgh Memorial Fund, the Hebrew Free Loan Association, and the National Refugee Service.

Jewish Social Service Agency.

823 Different Families were served by the agency in 1942.

Two-thirds of All Applicants were known to us for the first time.

Home Front Morale was sustained by the agency's help to families of men in the armed forces.

Special Services to Defense Workers was the agency's contribution to production.

War Pressure Resulted in an increase in the number of people coming to us with mental and emotional disturbances.

More Children Needed Service both in their own homes and in foster home placement.

Rising Cost of Living involved more families in debt and trouble, bringing them to us for assistance and consultation.

Relief Standards Were Raised to meet present day costs in Washington.

Community Understanding, Fostered by the work of our functional committees, strengthened the agency's program in 1942.

PETITIONER'S EXHIBIT 2

This Agreement made and entered into this 11th day of October, 1939, by and between the Hebrew Home for the Aged, a body corporate, organized and existing under the Laws of the District of Columbia, party of the first part (hereinafter called the Lessor), and the Jewish Social Service Agency, a body corporate, organized and existing under the Laws of the District of Columbia, party of the second part (hereinafter called the Lessee), both of said corporations acting herein pursuant to appropriate resolutions of its Boards of Directors or Trustees, Witnesseth:

(1) That for and in consideration of the covenants and agreements of the lessee hereinafter contained, the lessor does hereby let and lease to the lessee and the lessee does hereby lease from the lessor, that portion of Parcel No. 83/63 in the District of Columbia, owned by the lessor and commencing for the same on the west line of said Parcel and extending east along Spring Road, Northwest, for a distance of approximately fifty feet and thence north from said point for a distance of approximately one hundred and fifty feet, thence west for a distance of one hundred and five feet to the westerline line of said Parcel, thence one hundred and ten feet south to the place of beginning, for a period of twenty (20) years, commencing for the same on the 1st day of October, 1939, and fully and completely ending on the 30th day of September, 1959, at and for the rental of \$1.00 (One Dollar) per year, payable in advance on the first day of October of each year of said term, commencing with the first day of October, 1939.

(2) Said lessee does hereby accept said leasing and letting and does hereby agree to pay said rental reserved herein when and as due, and agrees within six (6) months from the date of the commencement of building operations, to erect on said premises, at its own cost and expense, a

two-story building, plans and specifications of which are first to be approved by the lessor in writing, which building is to be used exclusively for the incorporation
 10 purposes of the Jewish Social Service Agency and such other purposes as it may hereafter be authorized to by law.

(3) The lessee does hereby agree that the building to be erected on said land hereby demised shall conform in all particulars with plans and specifications approved by the lessor and that the building so erected, shall, at the expiration of the term herein demised, or any renewals or extensions thereof, or prior thereto as herein provided for, be and become the property of the lessor.

(4) The lessee further agrees, prior to the commencement of any building operations on the demised premises, to furnish the lessor with a bond with good and sufficient surety, guaranteeing the erection and completion of said building in accordance with plans and specifications approved by the lessor and providing further that all labor and materials used in connection with said building shall be fully and completely paid for and providing for a release for all Mechanic's Liens for labor and materials entering into the construction of said building.

(5) Said lessee further agrees in connection with said construction work, to provide, at its own cost and expense, public liability insurance, indemnifying the lessor against any and all claim or claims which it may be called upon to pay or defend by reason of any injuries to the general public in connection with the construction of the aforesaid building and the lessee further agrees to provide, at its own cost and expense, Workmen's Compensation Insurance and to secure the approval of the proper District of Columbia Authorities for its plans and specifications and to conduct

the work in accordance therewith and existing building regulations.

(6) Lessee further agrees during the term of this lease, to so operate its building and conduct its services therein in such manner as to not interfere with the operation of the Home for the Aged of the lessor, located immediately adjacent to the building to be erected herein, or any other enterprises or services which the lessor or its assigns may conduct in, on, or about the remainder of the parcel of land not leased to the lessee, and further agrees, in addition to the rental herein provided to be paid to the lessor, to pay, on the first day of October of each year, on presentation to it of proper tax bills, any taxes, general or special, which may be levied or assessed by the District of Columbia, or the Federal Government in connection with the use by the lessee of the land herein leased and the building to be erected thereon.

(7) Lessee further agrees that it will not transfer nor assign this lease, or the lease-hold interest therein conveyed, nor sub-let the land and/or the building to be erected thereon, or any part thereof, either voluntarily or involuntarily, by operation of law, or otherwise, without the written consent of the lessor first obtained.

(8) Said lessee agrees to keep and maintain said building, after its erection, and every part thereof, as well as the land leased herein, in good condition, maintenance and repair during the term of this lease at its own cost and expense.

(9) Lessee further agrees to pay for all electric light and gas used in or on said premises during the term of the lease and agrees to pay for all water used in or on said premises, when and as the same may become due and payable.

(10) Said lessee further agrees that if it should fail to keep or perform any of the covenants, agreements or conditions herein undertaken by it to be kept and performed, or if it should fail to erect a building in accordance with plans and specifications herein agreed to be erected by the lessee within six (6) months from the date hereof, or if after the erection of said building and during the term of this lease, it shall cease to use said building for the purpose for which said lessee was incorporated or hereafter authorized by law to perform, then this lease and the term

herein demised shall, at the sole option of the lessor,
 12 cease and determine and the lessor shall have the right to forthwith institute proceedings in the appropriate Courts of the District of Columbia for the summary possession of the land demised and the building located thereon, all without the necessity of serving any notice to quit upon the lessee, the service of which notice is hereby waived by the lessee.

(11) It is agreed between the parties hereto that the lessee shall have an option of renewing this lease for an additional term of twenty (20) years upon the same terms and conditions as herein set forth, provided notice of the lessee's intention to exercise said option is given to the lessor, in writing, not later than the First day of February, 1959.

In Witness Whereof the said lessor has caused its corporate name to be affixed by Charles A. Goldsmith, its President, attested by Simon Hirshman, its Secretary, with corporate seal affixed and does hereby appoint the said Simon Hirshman its true and lawful attorney in fact for it and on its behalf to acknowledge and deliver these presents as its act and deed, and the said lessee has caused its corporate name to be affixed by Joseph A. Wilner, its President, attested by Richard K. Lyon, its Secretary, with corporate seal affixed and does hereby appoint the said Joseph A. Wilner its true and lawful attorney in fact

for it and on its behalf to acknowledge and deliver these presents as its act and deed, the day and the year first hereinbefore written.

HEBREW HOME FOR THE AGED,

(a body corporate) (Seal)

By Chas. A. Goldsmith
President.

JEWISH SOCIAL SERVICE AGENCY,

(a body corporate)

By Joseph A. Wilner
President.

Attest:

SIMON HIRSHMAN
Secretary.

(Seal)

Attest:

RICHARD K. LYON
Secretary.

(Seal)

* * * * *

14

OPINION NO. 508

* * * * *

Endorsed: Received and filed August 6, 1943, Board of Tax Appeals for the District of Columbia.

Findings of Fact and Opinion

The Assessor of the District of Columbia assessed the petitioner, and the petitioner paid the District the sum of \$656.25 as a real estate tax for the last half of the fiscal year ending June 30, 1941, and the entire fiscal year ending

June 30, 1942. The petitioner here seeks refund on the ground that (a) it does not own the property taxed and (b) such property is used exclusively for charitable purposes in the District of Columbia.

Findings of Fact.

The petitioner, the Hebrew Home for the Aged is a non-profit corporation organized under the laws of the District of Columbia. It is operated for purely public charity.

The Jewish Social Service Agency is an institution engaged in social work among those of the Jewish faith, exclusively. It is conducted for purely public charity.

In October 1939 the petitioner, hereinafter called the Home, was, and still is the owner of a tract of land described as Parcel 83/63. On October 1, 1939, the Home entered into an agreement with the Jewish Social Service Agency, hereinafter called the Agency, whereby the Home agreed to

15 lease to the Agency for a period of 20 years that portion of Parcel 83/63 described as follows:

“commencing on the West line of the parcel and extending East along Spring Road for a distance of approximately 50 feet. Thence North from said point for a distance of approximately 150 feet. Thence West for a distance of 105 feet to the Westerly line of said parcel and thence 110 feet South to the place of beginning.”

On its part the Agency agreed to pay the home an annual rental of \$1.00, and to erect on such leased portion of Parcel 83/63 a substantial two story building in accordance with plans and specifications to be approved by the Home. The Agency further agreed that at the expiration of the term of the lease the then contemplated building would belong to the Home.

Thereafter the Agency commenced the erection of the building on the leased portion of Parcel 83/63, and completed some time prior to the beginning of the last half

of the fiscal year ending June 30, 1941. The building was erected at a cost of \$25,000. It is reasonably worth that sum.

Shortly thereafter the Commissioners of the District of Columbia notified the Home that they contemplated ordering the Assessor to place the improvements represented by the building (and other alleged property to be owned by the Home, not here involved) on the tax list of the District and to assess the petitioner a real estate tax thereon accordingly. Hearings or conferences relative to such contemplated action were held, and the action indicated by the Commissioners was finally taken in April, 1942. On April 30, 1942, the Assessor assessed the Home a real estate tax on the building erected by the Agency on the leased portion of parcel 83/63, as follows: for the last half of the fiscal year ending June 30, 1941, a tax of \$218.75, and for the entire fiscal year ending June 30, 1942, a tax of \$437.50.

The petitioner paid such assessments under protest in writing on May 28, 1942. This proceeding was filed on June 10, 1942.

16

Opinion

The Board has jurisdiction in this proceeding under Section 5(a) of Title IX of the District of Columbia Revenue Act of 1937, as amended by the Act of May 16, 1938.

The taxes here involved are real estate taxes assessed on a building erected by the Jewish Social Service Agency, herein called "Agency", on a portion of Parcel 83/63 owned by the petitioner, the Hebrew Home for the Aged, herein called the "Home", and leased for a period of 20 years to the Agency under an agreement wherein it is agreed that the Agency will pay an annual rental of \$1, and that at the end of the term of the lease the building would belong to the House. The building cost \$25,000, and is reasonably worth that sum.

The Home here contends that the tax is invalid because (a) it is not its property, and (b) it is used exclusively for charitable purposes in the District of Columbia. The Home claims exemption under the law as it existed before and after December 24, 1942, the effective date of an act entitled "An Act to define the real property exempt from taxation in the District of Columbia."

At this point the Board should state that it is of the opinion that authority for the claimed exemption, if it exists must be found in Section 8 of the Act of March 3, 1877 (Sec. 47-801 D. C. Code, 1940 Ed.) and not in the Act of December 24, 1942. In a recent proceeding, *Salvation Army v. District of Columbia*, D. C., B. T. A. Docket No. 594, the Board disposed of a contention similar to that here made with the ruling following:

17 "The taxes here involved were assessed on April 24, 1942, and were for the fiscal year ending June 30, 1942. The petitioner, however, insists that the Act of December 24, 1942, is retroactive. That is only partially correct. The only retroactive section of the Act is Section 4, which provides as follows:

'Section 4. The Commissioners of the District of Columbia, upon written application by the owner of real property, filed within ninety days from the date of the approval of this Act, are authorized to abate any tax assessed against any real property exempted by this Act where such tax was assessed after January 1, 1941, or to refund any such tax within the limitations of appropriations therefor.'

Every other section of the Act is prospective.

"Section 4, above quoted, authorizes the Commissioners to abate and refund any taxes assessed against property exempted by the Act whether or not such tax was assessed after January 1, 1941. Whether the words 'are authorized' are to be interpreted to mean 'are directed' and whether in a proper case the provisions of Section 4 are mandatory, is a matter which is not before this Board. Certainly this

Board has no power to compel the Commissioners to abate the tax or to make a refund, and if Section 5 of the Act confers on the Board of Tax Appeals the power to review the action of the Commissioners under Section 4 of the Act, the petitioner is here met with a well recognized rule that before the Board could entertain such appeal, the taxpayer must show that he has exhausted his remedy before the Commissioners, which has not been done.

“Since the Board does not believe that the question here presented is to be settled by recourse to the Act of December 24, 1942, it does not attempt to decide whether or not the language of such Act, if applicable in point of time, was broad enough to exempt the property here involved from taxation. If the petitioner’s property is to be here exempted from taxation for the fiscal year ending June 30, 1942, provision for such exemption must be found in the law as it existed at that time.”

Section 8 of the Act of March 3, 1877 (Sec. 47-801, D. C. Code, 1940 Ed.), to which we must look for exemption of petitioner’s property in this proceeding, provides “if any portion of any such building, house, grounds or cemetery so in terms excepted, * * * is used to secure a rent or income, * * * such portion of the same, or a sum equal
18 in value to such portion, shall be taxed against owner of said building or grounds”.

The effect of the lease arrangement is to produce rent or income to the Home, in addition to the nominal sum of \$1.00, which, of course, is not here considered. What the increment to the Home will be is uncertain, but, without doubt, it will be substantial. The Agency has erected on the Home’s property a building worth \$25,000. What will be its value in 20 years will depend upon many factors, such as repairs, replacements, increase or decrease in property value, but the probabilities are that it will be substantial. Whatever it will be, it will be rent or income. The increment to the owner of the land in similar cases has been

considered income under the Federal income tax laws, and has been so regarded by this Board. *Capital Transit Co. v. District of Columbia*, D. C. B. T. A., Docket No. 323.

Under well recognized rules of the law real property, a building erected on one's land by some one else becomes the property of the owner of the land in the absence of a clear understanding to the contrary. *People ex rel. Int. Nav. Co. v. Barker*, 153 N. Y. 98, 47 N. E. 46; *Comstock v. Waterford*, 85 Conn. 6, 81 Atl. 1059; *Lone Pine Lawn Corp. v. Helvering*, 121 F. (2d) 935; *Central C. & O. Co. v. Car-selowey*, 40 F. (2d) 540.

Section 47-713 D. C. Code, 1940 Ed. among other things, provides that "All real estate in the District of Columbia, including improvements thereon, shall be listed and assessed * * *." See also Sections 47-710 and 47-711.

Unless the property taxed was exempt under some other provision of law, the assessment here under consideration and based upon premise of ownership in the Home was valid. That leads to the next inquiry, namely, whether the property is exempt by reason of the use thereof and of the character of the tenant, the Agency, and the nature of its activities.

19 The Board has found that the Agency, like the Home, was conducted for purely public charity. The Agency is a most worthy charitable institution and is so generally recognized. It receives a substantial part of public contributions to the Community Chest. If the Board were called upon to determine a policy dictated in the public interest, it would not hesitate to accord the exemption here claimed. But the Board can find no justification therefor in the law as it existed during taxable years involved. The fact that premises are leased to, and used by an institution conducted for purely public charity does not afford to the leased property exemption from real estate taxation. The property must be owned by the charitable institution and used by it for purely public charity.

The Board has searched the applicable Sections of the law for some ground upon which it could base a holding that the property involved was exempt, but it is forced to the conclusion, and must, therefore, hold, as it does, that the taxes here involved were not erroneously collected by the District of Columbia from the petitioner; and that the petitioner is not entitled to any refund on account thereof.

Decision will be entered for respondent.

S/ JO. V. MORGAN,
Member Sole.

August 6, 1943.

20 Endorsed: Received and filed Aug. 6, 1943. Board
of Tax Appeals for the District of Columbia.

Decision

This proceeding came on to be heard upon the petition filed herein, and upon consideration thereof and of the evidence adduced at the hearing on said petition, it is by the Board this 6th day of August, 1943

ADJUDGED AND DETERMINED, That no sum as a real estate tax for the last half of the fiscal year ending June 30, 1941, and the entire fiscal year ending June 30, 1942, has been erroneously collected by the District of Columbia from the petitioner; and that the petitioner is not entitled to any refund thereof.

S/ JO. V. MORGAN,
Member Sole.

August 6, 1943.

* * * * *

21 Endorsed: Received and filed Sep 28 1943 Board
of Tax Appeals for the District of Columbia

*Petition of Taxpayer for Review by the United States Court
of Appeals for the District of Columbia of a Decision
by the Board of Tax Appeals for the District of Co-
lumbia.*

Taxpayer, the petitioner in this cause, by Simon Hirshman and Norman Fischer, counsel, hereby files its petition for a review by the United States Court of Appeals for the District of Columbia of the decision of the Board of Tax Appeals for the District of Columbia, rendered on September 9, 1943, determining that the real estate taxes involved herein, were lawfully assessed against the petitioner by the Assessor of the District of Columbia, for the last half of the fiscal year, ending June 30, 1941, and the entire fiscal year ending June 30, 1942, in the total amount of \$656.25,

1. Petitioner is a non-profit corporation, organized under the laws of the District of Columbia, confining its activities solely within the District of Columbia.

Nature of the Controversy.

1. This controversy involves the question of the legality of the assessment for real estate taxes on part of Parcel 83/63, now known as Lot 805, In Square 2908, for the last half of the fiscal year ending June 30, 1941, and the entire fiscal year, ending June 30, 1942, in the amount of \$656.25.

2. The petitioner, the Hebrew Home for the Aged, was incorporated in 1914, as a non-profit corporation, under the laws of the District of Columbia, to provide a home for indigent and aged persons of the Jewish faith. The Board
of Tax Appeals for the District of Columbia found
22 the Hebrew Home for the Aged to be a "purely public charity". In 1925 it acquired all of Parcel 83/63, containing approximately 2.64 acres, located on Spring

Road, Northwest, Washington, D. C., on a part of which, within the next twelve months thereafter, it erected its Home for the Aged.

3. In 1939 it entered into an agreement with the Jewish Social Service Agency, another non-profit corporation, organized under the laws of the District of Columbia, whereby it leased to said Jewish Social Service Agency for a period of twenty (20) years, part of Parcel 83/63, located immediately west of the Home premises, approximately 50 x 150, now known as Lot 805, in Square 2902, by the terms of which agreement the Jewish Social Service Agency agreed to pay the nominal sum of \$1.00 per year as rent, and providing further that the Jewish Social Service Agency was to erect, at its own cost and expense, a three-story brick building on said leased premises, to be used by the Jewish Social Service Agency for its charitable purposes and at the expiration of said twenty years, or any renewal or extension thereof, the improvements so erected by the Jewish Social Service Agency were to be and become the property of the Hebrew Home for the Aged. Thereupon the Jewish Social Service Agency erected a three-story building on said land at an approximate cost of \$25,000.00. The Board of Tax Appeals for the District of Columbia found the Jewish Social Service Agency to be a "purely public charity".

4. For many years prior to 1941, Parcel 83/63 and all of the improvements thereon, were on the tax free list as a result of the action of the Assessor of the District of Columbia. In 1942 the Commissioners of the District of Columbia, as a result of a study made by a special committee, appointed by them, placed all of said Parcel 83/63, together with the improvements thereon, on the tax list and assessed the Home for the real estate taxes on said parcel and improvements. Said assessment was paid under protest, in writing and an appeal taken to the Board of Tax Appeals for the District of Columbia. Pending the hearing on this appeal to the Board of Tax Appeals

for the District of Columbia, on December 14, 1942, Congress passed an Act as a result of which the Commissioners exempted all of Parcel 83/63, with the exception of the ground immediately west of the Hebrew Home for the Aged and the improvements thereon erected by the Jewish Social Service Agency, but denied the request of the Hebrew Home for the Aged for the exemption of said portion of Parcel 83/63, now known as Lot 805, in Square 2902, together with the building erected by the Jewish Social Service Agency, involved in this appeal, from tax payment.

5. The petitioner, being aggrieved by the conclusions of law, contained in the opinion of the Board of Tax Appeals and the decision in pursuance thereto, desires to obtain a review thereof.

SIMON HIRSHMAN,
NORMAN FISCHER,
Attorneys for Petitioner,
915 Woodward Building,
Washington, D. C.

* * * * *

24 Endorsed: Received and filed Oct 2 1943 Board
of Tax Appeals for the District of Columbia

Statement of Points on Review.

To: Corporation Counsel for the District of Columbia,
Counsel for Respondent.

The party seeking review of the decision of the Board of Tax Appeals for the District of Columbia in the above cause, relies upon the following points on review:

1. The Board of Tax Appeals erred in holding that the taxes involved herein were not erroneously collected by the District of Columbia.

2. The Board of Tax Appeals erred in holding that the land and improvements involved herein, now known as Lot 805 in Square 2902, were not exempt from taxation.

3. The Board of Tax Appeals erred in holding that title to the improvements erected on the land in controversy was in the Hebrew Home for the Aged.

4. The Board of Tax Appeals erred in holding that the land and improvements involved herein, were not exempt under the provisions of the Act of Congress of December 24, 1942.

5. The Board of Tax Appeals erred in holding that the land and improvements thereon, involved herein, were not exempt under the Act of March 3, 1877.

Service of the foregoing Statement of Points on Review is hereby acknowledged this 2nd day of October, 1943.

SIMON HIRSHMAN,
NORMAN FISCHER,
Counsel for Petitioner,
Woodward Building,
Washington, D. C.

S/ M. MAHOMER, JR.,
Asst. Corporation Counsel of the
District of Columbia, for Respondent.

FILED JAN - 2 1944

Joseph W. Stinson

BRIEF FOR RESPONDENT

CLERK

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA

No. 8622

HEBREW HOME FOR THE AGED, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

RICHMOND B. KEECH,
Corporation Counsel, D. C.,
VERNON E. WEST,
Principal Assistant Corporation Counsel, D. C.,
GLENN SIMMON,
Assistant Corporation Counsel, D. C.,
Attorneys for the Respondent.

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IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA

No. 8622

HEBREW HOME FOR THE AGED, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

BRIEF FOR RESPONDENT

SUMMARY OF ARGUMENT

I

The building erected on lot 805 is the property of the petitioner for all purposes, and, in any event, for purposes of real estate taxation.

(a) Under the provisions of the lease, the building became the property of the lessor immediately upon its erection.

(b) Even if the lease agreement had been silent as to the ownership of the building, it would have become the property of the lessor immediately upon its erection.

(c) Under statutes in force in the District, the owner of land is considered to be the owner of all improvements thereon for purposes of taxation.

II

The building here involved is not exempt from taxation for the reasons that, even if petitioner were an institution of purely public charity conducted without charge to inmates, profit, or income (which the record does not show it to be), (a) the building is not absolutely required and actually used for the legitimate purposes of the petitioner, and (b) it is used to secure a rent or income.

III

The question here presented involves the construction of an exemption statute. Exemptions are not favored, and provisions of exemption statutes must be narrowly construed.

ARGUMENT

Petitioner is the owner of lot 805 in square 2902. On October 11, 1939, petitioner entered into an agreement with the Jewish Social Service Agency under which the Agency agreed to lease lot 805 for a period of 20 years. The Agency agreed (1) to pay a rental of \$1.00 per year, and (2) to erect on said premises at its own cost and expense a two-story building, the plans and specifications of which were first to be approved by the lessor in writing, said building to be and become the property of the lessor at the expiration of the term of the lease, or any extension thereof, or prior thereto, as provided in the lease. Said building was erected in 1940 and the value thereof was included in the assessment made against lot 805 for the second half of the fiscal year 1941 and subsequent taxable periods. Petitioner has paid the assessments for the last half of the fiscal year 1941 and for the entire fiscal year 1942. No protest was made regarding that portion of the assessment computed upon the value of the land, and no contention is here made that said land is exempt from taxation. Petitioner contends that the building erected by its lessee upon lot 805 is exempt from taxation under the provisions of Sec-

tion 8 of the Act of March 3, 1877 (19 Stat. 399; Sec. 47-801, D. C. Code, 1940), which reads in material part as follows:

"That the property exempt from taxation under this act shall be the following and no other, namely: First, the Corcoran Art Building, free public library buildings, churches, the Soldiers' Home, and grounds actually occupied by such buildings; secondly, houses for the reformation of offenders, almshouses, buildings belonging to institutions of purely public charity, conducted without charge to inmates, profit, or income; cemeteries dedicated and used solely for burial purposes and without private income or profit; but if any portion of any such building, house, grounds, or cemetery so in terms excepted is larger than is absolutely required and actually used for its legitimate purpose and none other, or is used to secure a rent or income, or for any business purpose, such portion of the same, or a sum equal in value to such portion, shall be taxed against the owner of said building or grounds; * * *."

The statute exempts buildings belonging to institutions of purely public charity conducted without charge to inmates, profit or income. But if any such building (or the grounds of such an institution) is larger than is absolutely required or is not actually used for the legitimate purposes of such institution, or is used to secure a rent or income, such building (or grounds) shall be taxed against the owner thereof. Therefore, it is first necessary to determine the ownership, for the purposes here involved, of the building in question.

I

Petitioner is the owner of the building for all purposes, and in any event for purposes of real estate taxation.

- (a) Under the provisions of the lease the building became the property of the lessor immediately upon its erection.

The lease provides that "the building to be erected on said land hereby demised shall conform in all particulars with plans and specifications approved by the lessor and that the building so erected shall, at the expiration of the term herein demised, or any renewals or extensions thereof, or prior thereto as herein provided for, be and become the property of the lessor." The lessee was required to, and did, in fact, erect the building in accordance with plans and specifications approved by the lessor. The building is a permanent improvement to the land and may not be removed by the lessee. All of the language of the lease indicates that the parties intended that the building should become a part of the real property of the lessor immediately upon its erection.

In construing substantially identical language, the Court of Appeals of New York, in the case of *People ex rel. International Nav. Co. v. Barker*, 153 N. Y. 98, 47 N. E. 46, 47, said:

"* * * The appellants rest their argument with respect to the question of ownership upon the provision of the lease above mentioned, that the shed shall become the property of the city after the expiration of the lease, which provision, as they maintain, shows that it was in contemplation of both parties that the erections should be the property of the steamship company during the term of the lease. We think that this is an incorrect view of the situation. It is a familiar rule that, when structures are erected by persons not owners of the land, they become part of the realty, and as such the property of the land-owner. It requires an agreement to be expressed in order to prevent the operation of this rule. * * * When the lease in question provides that the sheds are to become the property of the city at its expiration, the language does not warrant the inference of an intermediate ownership, unless we attach an undue significance to the word 'become.' Such a meaning we do not think should be attached to that word, whether we regard the purpose that it apparently subserves, or whether we regard the confusion of ideas which would

follow if it had the meaning claimed for it. Its use was evidently to prevent any misunderstanding as to a right of removal, whether under a general claim of property in the erections, or under a claim to them as trade fixtures. It was to make the city's ownership definite. The provision followed naturally and not without some degree of pertinence, upon the obligation imposed upon the lessee to erect a shed. Its presence had the effect of negating any inference from the requirement that the lessor had waived its ownership. The obligation resting upon the lessee to erect a shed was one of the conditions of the letting by the city, and formed a part of its consideration. As the learned counsel for the respondent justly observed, it is not legally conceivable that the relator could be an owner until the termination of the lease, and that then a new ownership should spring up in the city; for 'ownership necessarily implies perpetuity, or at least the possibility of perpetuity.' * * *."

See also:

Mercantile-Commerce Bank and T. Co. v. Mid-City R. Co., 348 Mo. 1006, 156 S. W. (2d) 730, 736;
Murray v. Odman, 1 Wash. (2d) 481, 96 P. (2d) 489, 490;
City of Oakland v. Albers Bros.' Milling Company, 43 Calif. App. Rep. 191, 184 P. 868.

- (b) Even if the lease agreement had been silent as to the ownership of the building it still would have become the property of the lessor immediately upon its erection.

It is well established that unless the lessee expressly reserves the right of removal, improvements to the land become the property of the lessor immediately upon erection.

Kutter v. Smith, 2 Wall. 491, 17 L. Ed. 830;
People ex rel. International Nav. Co. v. Barker, supra.

- (c) Under statutes in force in the District of Columbia the owner

of the land is considered to be the owner of all improvements thereon for purposes of taxation.

Section 1, Chapter 287, of the Act of August 14, 1894 (28 Stat. 282; Section 47-701, D. C. Code, 1940), provides that "All real property in the District of Columbia, except as hereinafter provided, *shall be assessed in the name of the owner, or trustee or trustees of the owner thereof. * * *.*" (Italics supplied.) Under Section 5 of the Act of July 1, 1902 and subsequent acts cited in Section 47-713, D. C. Code, 1940, it is required that "All real estate in the District of Columbia subject to taxation, *including improvements thereon*, shall be listed and assessed at not less than the full and true value thereof in lawful money." (Italics supplied.) Thus, the improvements may not be severed from the land. Accordingly, the value of the land, together with all improvements thereon, must be assessed *in the name of the owner*.

People ex rel. International Nav. Co. v. Barker, supra;
Comstock v. Waterford, 85 Conn. 6, 81 A. 1059, 37
 L. R. A. (N. S.) 1166;
Central Coal & Coke Co. v. Carselowey, 40 F. (2d)
 540;
State v. Shamblin, 185 Okla. 126, 90 P. (2d) 1053,
 1054;
In Re Indian Territory Illuminating Oil Co., 43 Okla.
 307, 142 P. 997, 1001.

That is precisely what has been done in this case.

II

The building is not exempt under the statute.

In order for the building here involved to be entitled to exemption, it must clearly appear (1) that it belongs to an institution of purely public charity conducted without charge to inmates, profit or income; (2) that the building is absolutely required and actually used for the legitimate purposes of its

owner, and (3) that it is not used to secure a rent or income.

The Board held the petitioner to be an institution of purely public charity, but the Board did not find, and the record does not show, that the petitioner is conducted "without charge to inmates, profit, or income". However, assuming, without admitting, that the petitioner is an institution of purely public charity, conducted without charge to inmates, profit, or income, the building here involved still does not meet either of the two latter requirements for exemption.

It is plain that the building here involved is not used by the petitioner for any purpose, and no contention is made that it is either required or used in carrying on the purposes of the petitioner. The exemption does not extend to the lessee, regardless of its character.

Morris Canal Co. v. Baird, 239 U. S. 126;
Douglas County Agricultural Society v. Douglas County, 104 Wisc. 429, 80 N. W. 740.

The petitioner seeks to construe the words "rent or income" used in the exemption statute as meaning "taxable income", and to apply the technical definition of the latter term as used in the Federal Income Tax Law. It is difficult to follow the argument that a recent interpretation of technical language in the Income Tax Law has any bearing upon Congressional intention regarding the meaning of words used in the exemption statute which was enacted in 1877. The words "rent or income" were used in their ordinary sense.

The word "income" is defined in Webster's New International Dictionary as:

"* * * something that comes in by way of addition or increment * * *."

The definitions found in Black's Law Dictionary include the following:

"* * * Something derived from property, labor, skill, ingenuity, or sound judgment, or from two or more

in combination, or from some other productive source.
 Stony Brook R. Corporation v. Boston & M. R. R.,
 260 Mass. 379, 157 N. E. 607, 610, 53 A. L. R. 700.
 * * *.”

The word “rent” is defined in Webster’s New International Dictionary as:

“* * * revenue; income * * *.

“The return made by the tenant or occupant of land or corporeal hereditaments to the owner for the use thereof; a certain periodical profit, whether in money, provisions, chattels, or services, issuing out of lands and tenements in payment for the use.”

Among the definitions in Black’s Law Dictionary is the following:

“The compensation, either in money, provisions, chattels, or labor, received by the owner of the soil from the occupant thereof. * * *.” (Citing cases.)

The lessee has erected upon the property of the petitioner a building worth \$25,000.00. The addition of this building has substantially increased the value of petitioner’s property. Such increment amounts to rent or income as contemplated by Section 8 of the Act of 1877.

III

The provisions of the statute here involved must be narrowly construed.

The petitioner here is seeking exemption from taxation. It is a well-established rule of law that exemptions are never preferred, that they are not favored, that exemption provisions are to be narrowly construed, and that the burden is on the party seeking exemption to show itself to be clearly within such provisions.

Phoenix Fire and Marine Ins. Co. v. Tennessee, 161
U. S. 174;
Yazoo & M. V. R. Co. v. Adams, 180 U. S. 1;
Combined Congregations of the District of Columbia
v. Dent, -- U. S. App. D. C. --, decided December
20, 1943;
26 R. C. L. 313;
61 C. J. 391.

The question here presented is solely one of statutory construction. The question of whether the use of the property here involved is such that Congress might have, or should have, provided for its exemption is not one for determination by the Board of Tax Appeals or this Court. Congress has established certain requirements for exemption. The property here involved does not meet these requirements.

CONCLUSION

For the reasons above stated, it is respectfully submitted that the decision of the Board of Tax Appeals should be affirmed.

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